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7 SALES, INC., BANANA REPUBLIC, LLC, AND OLD NAVY,  
LLC  
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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION  
14

15 ROOTS READY MADE GARMENTS CO.  
16 W.L.L.,

17 Plaintiff,

18 v.

19 THE GAP, INC., a/k/a, GAP, INC., GAP  
INTERNATIONAL SALES, INC., BANANA  
20 REPUBLIC, LLC, AND OLD NAVY, LLC

21 Defendants.  
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Case No. C 07-03363 CRB

**SUPPLEMENTAL JOINT CASE**  
**MANAGEMENT STATEMENT AND**  
**[PROPOSED] ORDER**

Date: December 7, 2007

Time: 8:30 a.m.

Place: Courtroom 8, 19th Floor

Judge: Charles R. Breyer

1 The parties in the above-entitled action jointly submit this Supplemental Case  
2 Management Statement and Proposed Order and request the Court to adopt it as its Case  
3 Management Order in this case. This joint statement supplements the parties' prior Joint Case  
4 Management Statement and Proposed Order, which was filed on October 9, 2007 and has not  
5 been entered yet by the Court.

6 **1. Ruling on Motions**

7 On October 18, 2007, the Court granted in part and denied in part Gap's Motion to  
8 Dismiss the First Amended Complaint. Specifically, the Court dismissed with prejudice Roots'  
9 breach of contract claim based on a third-party beneficiary theory; dismissed with leave to  
10 amend Roots' claims for breach of contract, tortious interference with contract, tortious  
11 interference with prospective business relations, breach of the covenant of good faith and fair  
12 dealing, unjust enrichment, quantum meruit, and promissory estoppel; and denied Gap's motion  
13 to dismiss with respect to Roots' § 17200 claim and fraud claim, holding that "Roots may  
14 proceed on its claim for common law fraud insofar as the claim is premised on statements made  
15 after Gap and Gabana entered into written contracts." Oct. 18, 2007 Order at 4. The Court also  
16 granted Gap's motion for a protective order arising from Roots' participation in the deposition of  
17 Amin El Sokary.  
18

19 **2. Amendment of Pleadings**

20 Roots filed a Second Amended Complaint ("SAC") on November 16, 2007. The parties  
21 agree that Gap's responsive pleading will be due on December 14, 2007, Roots' opposition will  
22 be due on January 4, 2008, and Gap's reply will be due on January 11, 2008, with a hearing date  
23 of January 25, 2008 if the Court is available for a hearing on that day.  
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25 **3. Plaintiff's allegations and the principal factual issues in dispute**

26 In its SAC, Roots alleges that it entered into an oral contract with Gap, pursuant to which  
27 Roots agreed to purchase 1.7 million pieces of Gap excess inventory for \$6 million. According  
28

1 to Roots, Gap promised in exchange to grant Roots the right to distribute first-line Gap  
2 merchandise to retailers in the Middle East under Gap's International Sales Program, or ISP.  
3 Roots alleges that Gap breached the alleged oral contract by, *inter alia*, failing to grant Roots ISP  
4 distribution rights, not approving retailers identified by Roots, and terminating Roots' alleged  
5 ISP distribution rights without cause.

6 Roots also claims that in or about June 2003 it entered into a second oral contract with  
7 Gap, pursuant to which Roots agreed to develop a retail network for the ISP merchandise in the  
8 Middle East in exchange for ISP distribution rights. Roots alleges that Gap breached that alleged  
9 oral contract by, *inter alia*, failing to grant Roots ISP distribution rights, not approving retailers  
10 identified by Roots, and terminating Roots' alleged ISP distribution rights without cause.

11 Roots asserts claims for: (1) breach of an oral contract; (2) breach of a second oral  
12 contract; (3) violations Cal. Bus. & Prof. Code § 17200; (4) fraud; (5) tortious interference with  
13 prospective business relations; (6) promissory estoppel; (7) quantum meruit; and (8) unjust  
14 enrichment.

15 The principal factual issues in dispute at this stage of the litigation, include: (1) whether  
16 Roots and Gap entered into oral contracts; (2) whether Gap breached the alleged oral contracts  
17 by (a) not approving certain local retailers proposed by Roots, (b) terminating Roots' alleged ISP  
18 distribution rights, (c) attempting to contract directly with Roots' local retailers, and/or (d) filing  
19 or threatening to file trademark infringement lawsuits against Roots' local retailers; (3) whether  
20 Gap made material misrepresentations of fact to Roots; (4) whether Roots reasonably relied on  
21 the alleged misrepresentations; (5) whether Gap's termination of Roots' alleged ISP distribution  
22 rights and its subsequent conduct interfered with Roots' prospective business relations; (6)  
23 whether Gap's actions constituted unlawful or unfair business practices under Cal. Bus. & Prof.  
24 Code § 17200; and (7) whether Gap was unjustly enriched.

#### 25 **4. The principal legal issues in dispute**

26 In addition to the issues set forth above, which potentially involve mixed questions of law  
27 and fact, Gap raises two additional legal issues. First, Gap maintains that Roots' oral contract,  
28 interference, quasi-contract, and fraud claims are time-barred as a result of Roots' failure to file

1 this action within the relevant statute of limitations period and despite its knowledge of the  
2 ongoing related litigation in *Gabana Gulf Distribution Ltd., et al v. Gap International Sales, Inc.,*  
3 *et al.*, C 06 2584 CRB (the “Gabana Action”). Gap also asserts, among other things, that Roots’  
4 oral contract and fraud claims are barred by the parol evidence rule, that Roots’ oral contract  
5 claims are barred by the statute of frauds, and that Roots’ interference claim impermissibly seeks  
6 tort relief for alleged contract breaches.

#### 7 **5. Discovery**

8 In addition to the discovery described in the parties’ initial Joint Case Management  
9 Statement, on November 9, 2007, Roots served responses to Gap’s discovery requests, including  
10 (i) one set of Requests for Admissions; (ii) two sets of Interrogatories; and (iii) one set of  
11 Document Requests. As indicated above, on October 18, 2007, the Court granted Gap’s motion  
12 for a protective order regarding the El Sokary deposition.

#### 13 **6. Settlement and ADR**

14 The parties request that the Court schedule a settlement conference to take place before a  
15 magistrate judge by January 17, 2007.

#### 16 **7. Narrowing of Issues**

17 Plaintiff’s position: Plaintiff does not believe that there are dispositive issues that can be  
18 resolved at this time by motion or agreement of the parties.

19 Defendants’ position: Defendants believe that there are several dispositive issues that can  
20 be resolved by a motion to dismiss the SAC.

#### 21 **8. Scheduling**

22 The parties have not reached an agreement concerning the discovery schedule for this  
23 case.

24 Defendants’ Position: Defendants represent that they intend to take depositions of a  
25 number of foreign witnesses, many of which can only be completed through the Hague  
26 Convention or similar international discovery procedures. Essentially all of the potential  
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witnesses in this case other than current and former Gap employees are located overseas. Thus, foreign discovery will be essential. Defendants take the position that an extended discovery period is necessary to allow for adequate time to complete this foreign discovery. Accordingly, Defendants propose the following schedule for discovery:

- Fact discovery will close on August 1, 2008;
- Expert disclosures due on or before September 1, 2008;
- Rebuttal expert disclosures due on or before October 1, 2008; and
- Expert discovery closes on November 3, 2008.

Plaintiff's Position: Plaintiff believes that the factual issues in this case are relatively straightforward and that the case can therefore proceed according to a more efficient schedule. Roots anticipates that many of the foreign witnesses in this case will be employed by or affiliated with Roots, and that other foreign witnesses will cooperate with the discovery process, reducing the need to rely on the Hague Convention or other international discovery procedures.

Accordingly, Plaintiff proposes the following discovery schedule:

- Fact discovery will close on March 30, 2008;
- Expert disclosures due on or before April 30, 2008;
- Rebuttal expert disclosures due on or before May 30, 2008; and
- Expert discovery closes on June 30, 2008.

## **9. Trial**

Plaintiff requests a trial date in September 2008. Defendants request a trial date in February 2009.

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1 The parties agree that the case will be tried to a jury. The parties expect that the trial will  
2 last five days.

3  
4 Dated: November 27, 2007

Respectfully submitted,

COVINGTON & BURLING LLP

5 By: Concurrence obtained General Order 45 X.B.  
6 BRADLEY J. NASH

7 Attorneys for Plaintiff  
8 ROOTS READY MADE GARMENTS CO.  
W.L.L.

9 Dated: November 27, 2007

KEKER & VAN NEST, LLP

10  
11 By: /s/ Rose Darling  
12 ROSE DARLING

13 Attorneys for Defendants  
14 THE GAP, INC., a/k/a GAP, INC.,  
15 INTERNATIONAL SALES, INC.,  
BANANA REPUBLIC, LLC, AND OLD  
NAVY, LLC

16 **IT IS SO ORDERED.**

17  
18 Date: \_\_\_\_\_

19 \_\_\_\_\_  
HONORABLE CHARLES R. BREYER  
United States District Judge